

Securities and Exchange Commission

§ 230.481

files of the Commission but an order shall be included in the file for the registration statement in the following manner: “Declared abandoned by order dated _____.”

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

[47 FR 11446, Mar. 16, 1982]

INVESTMENT COMPANIES; BUSINESS DEVELOPMENT COMPANIES

AUTHORITY: Sections 230.480 to 230.485 issued under secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37, unless otherwise noted.

SOURCE: Sections 230.480 to 230.485 appear at 47 FR 11446, Mar. 16, 1982, unless otherwise noted.

NOTE: The rules in this section of Regulation C (§§ 230.480 to 230.488 and §§ 230.495 to 230.498) apply only to investment companies and business development companies. Section 230.489 applies to certain entities excepted from the definition of investment company by rules under the Investment Company Act of 1940. The rules in the rest of Regulation C (§§ 230.400 to 230.479 and §§ 230.490 to 230.494), unless the context specifically indicates otherwise, also apply to investment companies and business development companies. See § 230.400.

§ 230.480 Title of securities.

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and, if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or, if the issue matures serially, a brief indication of the serial maturities, such as “maturing serially from 1950 to 1960”; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

§ 230.481 Information required in prospectuses.

Disclose the following in registration statements prepared on a form available solely to investment companies registered under the Investment Company Act of 1940 or in registration statements filed under the Act for a company that has elected to be regulated as a business development company under Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a-54—80a-64):

(a) *Facing page.* Indicate the approximate date of the proposed sale of the securities to the public.

(b) *Outside front cover page.* If applicable, include the following in plain English as required by § 230.421(d):

(1) *Commission legend.* Provide a legend that indicates that the Securities and Exchange Commission has not approved or disapproved of the securities

or passed upon the accuracy or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense. The legend may be in one of the following or other clear and concise language:

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(2) “*Subject to Completion*” legend. (i) If a prospectus or Statement of Additional Information will be used before the effective date of the registration statement, include on the outside front cover page of the prospectus or Statement of Additional Information, a prominent statement that:

(A) The information in the prospectus or Statement of Additional Information will be amended or completed;

(B) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(C) The securities may not be sold until the registration statement becomes effective; and

(D) In a prospectus, that the prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted, or in a Statement of Additional Information, that the Statement of Additional Information is not a prospectus.

(ii) The legend may be in the following language or other clear and understandable language:

The information in this prospectus (or Statement of Additional Information) is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus (or Statement of Additional Information) is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(iii) In the case of a prospectus that omits pricing information under

§ 230.430A, provide the information and legend in paragraph (b)(2) of this section if the prospectus or Statement of Additional Information is used before the initial public offering price is determined.

(c) *Table of contents.* Include on either the outside front, inside front, or outside back cover page of the prospectus, a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include this table of contents immediately following the cover page in any prospectus delivered electronically.

(d) *Stabilization and other transactions.*

(1) Indicate on the front cover page of the prospectus if the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, and state the amount of additional shares the underwriter may purchase under the arrangement. Provide disclosure in the prospectus that briefly describes any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transactions that affect the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose in the prospectus the amount of securities bought, the prices at which they were bought and the period within which they were bought. In the event that § 230.430A of this chapter is used, the prospectus filed under § 230.497(h) or included in a post-effective amendment must contain information on the stabilizing transactions that took place before the determination of the public offering price shown in the prospectus; and

(3) If you are making a warrant or rights offering of securities to existing security holders and the securities not purchased by existing security holders are to be reoffered to the public, disclose in the prospectus used in connection with the reoffering:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities subscribed for by the underwriters during the offering period;

(iv) The amount of the offered securities sold during the offering period by the underwriters and the price or range of prices at which the securities were sold; and

(v) The amount of the offered securities to be reoffered to the public and the public offering price.

(e) *Dealer prospectus delivery obligations.* On the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Act (15 U.S.C. 77d(3)) and § 230.174. If the expiration date is not known on the effective date of the registration statement, include the expiration date in the copy of the prospectus filed under § 230.497. This information need not be included if dealers are not required to deliver a prospectus under § 230.174 or Section 24(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-24). Use the following or other clear, plain language:

DEALER PROSPECTUS DELIVERY OBLIGATION

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

(f) *Electronic distribution.* Where a prospectus is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type,

italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information.

[63 FR 6385, Feb. 6, 1998]

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisement or other sales material that is not a prospectus, or an advertisement or sales material excluded from the definition of prospectus by section 2(10) of the Act (15 U.S.C. 77b(10)) and related § 230.134, will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), if:

(1) It is with respect to an investment company registered under the Investment Company Act of 1940 (*1940 Act*), or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act,

(2) It contains only information the substance of which is included in the section 10(a) prospectus,

(3) It includes a conspicuous statement that:

(i) Identifies a source from which an investor may obtain a prospectus containing more complete information about the investment company, which should be read carefully before investing; or

(ii) If used with a profile under § 230.498 ("Profile"), indicates that information is available in the Profile about the investment company, the procedures for investing in the investment company, and the availability of the investment company's prospectus.

NOTE TO PARAGRAPH (A)(3): The fact that the statements included in the advertisement are included in the section 10(a) prospectus does not relieve the issuer, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading.

(4) It contains the statement required by Rule 481(b)(2) under the Securities Act (§ 230.481(b)(2) of this chapter) when used prior to effectiveness of the company's registration statement or, in